IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

CRL.A.No. 1976 of 2003()

SC.300/2000 of II ADDL.SESSIONS COURT, ERNAKULAM
CP.17/1999 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI
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APPELLANT: ACCUSED.

PONNAPPAN @ PARUPONA,
S/O.KUNJUKUNJU @ KUNJAPPAN, VI/388,
KARATHITHARA VEEDU, KANDAKADAVU.

BY ADV. SRI.SURIAN GEORGE IPE
SRI.P.RAVINDRA BABU

RESPONDENTS: COMPLAINANT.

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SHRI K.C. SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY
AND
K. PADMANABHAN NAIR, JJ.

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CRL. APPEAL NO. 1976 of 2003

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Dated this the 5th day of December, 2006

J U D G M E N T

Padmanabhan Nair, J.

The sole accused in S.C. No.300 of 2000 on the file of the Additional Sessions Court, Ernakulam has filed this Criminal Appeal challenging the conviction and sentence imposed on him in the aforesaid case. He was found guilty of an offence punishable under Section 302 of the Indian Penal Code, convicted and sentenced to undergo imprisonment for Life. Set off was also allowed.

2. The short facts necessary for the disposal of the appeal are as follows: Deceased Antony was a watchman of Kandakkadavu Padasekharam of Kumbalangi Village. Right to catch fish from the said Padasekharam and use the same for acqua culture for the period 1998-2000 was auctioned and P.W.9

was the successful bidder. There was unauthorised fishing from the said Padasekharam by various persons including appellant. So, to prevent theft of fish, P.W.9 appointed deceased Antony as Watchman. On one occasion deceased caught hold of appellant red handed with fish, fishing net, etc. From that day onwards appellant was in inimical terms towards deceased. Because of that enmity at about 8,45 p.m. on 28.8.1999 appellant caught hold of deceased when he reached Arakkuzhi Chira which lies in between Vijayan Canal and Kandakkadavu Padasekharam and inflicted stab injuries. Deceased Antony was taken to Gautham hospital. The Doctor on duty examined and proclaimed him dead. Appellant was arrested on 30.8.1999. P.W.1 went to police station and gave Exhibit P1 first information statement before P.W.14, Sub Inspector of Police, Kannamali police station. Based on Exhibit P1 first information statement, P.W.14 registered Exhibit P1(a) FIR. Subsequent investigation of case was taken over by P.W.17. He conducted inquest on the dead body of deceased Antony. Thereafter P.W.13, Doctor, conducted postmortem examination on the dead body and issued Exhibit P8 Postmortem Certificate. After investigation was

over, P.W.17 filed final report before Judicial First Class Magistrate-I, Kochi. Learned Magistrate committed case to Court of Sessions after observing formalities.

3. Learned Sessions Judge framed charges under Section 302 IPC after hearing both sides. Charges were read over and explained to appellant. He understood same and pleaded not guilty. On the side of prosecution P.Ws.1 to 17 were examined, Exhibits P1 to P18 proved and marked MOs.1 to 7 identified. After prosecution evidence was over, appellant was questioned under Section 313 Cr.P.C. He denied all incriminating circumstances brought out against him. As no grounds were made out to acquit appellant, he was called upon to enter on his defence. No defence witness was examined. Exhibits D1 to D6 were proved and marked. Learned Sessions Judge found appellant guilty of the offence charged, convicted and sentenced him as aforesaid. That conviction and sentence are under challenge in this appeal.

4. Learned counsel appearing for appellant has argued that there is no legal or acceptable evidence to connect appellant to offence alleged. It is argued that incident took

place at or about 8.45 p.m. on 28.8.1999 and there is absolutely nothing on record to show that there was sufficient light available in the place of occurrence. It is argued that P.Ws.1 and 3, two independent witnesses examined, turned hostile and did not support prosecution case. P.Ws.2 and 4, who are close relatives of deceased, alone gave evidence against appellant. It is argued that P.W.4 himself had admitted that he was in inimical terms towards appellant and as such the court ought to have rejected the evidence of P.Ws.2 and 4. It is also argued that prosecution has completely failed to prove the genesis of the incident and that even if the entire prosecution case is accepted as such, offence proved is one only under Section 304 Part II IPC and not under Section 302 IPC.

5. The first question arising for consideration is whether Antony died because of the injuries sustained by him at or about 8.45 p.m. on 28.8.1999. P.W.1 gave first information statement at 11.00 p.m. on 28.8.199. Exhibit P9 accident-cum-wound certificate issued from Gautham hospital shows that Antony was brought dead to hospital at about 10.00 p.m. on 28.8.1999. Inquest was conducted by Circle Inspector of Police, P.W.17, in

the early morning of 29.8.1999. Thereafter P.W.13 conducted postmortem examination on the dead body of deceased and issued Exhibit P8 Postmortem Certificate, which contains the following injuries:

> "1. Incised penetrating wound 2.5x 0.7 x 4 cm obliquely placed on the upper aspect of left side of front of abdomen. Its lower front end was 7.5 cm outer to midline and 30 cm below middle of collar bone. The would was directed downward backwards and to the right for a total minimum depth of 4 cm. The wound in its course penetrated the structures of abdomen wall, and terminated fy making an incision on greater omentum 3 cm below the greater curvature of stomach. The abdominal cavity contained 200 ml of fluid blood.
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> 2. Incised penetrating wound 3x0.7 cm. oblique on front of lower abdomen. Its front lower end was placed 3 cm below umbilicus. The wound penetrated the abdominal cavity for a length of 4 cm, and terminated by making a transverse cut on the jejunum of small intestine. The contents of small intestine were seen spilled in the abdominal cavity. Loops of small intestine were stained with blood.
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> 3. Incised penetrating wound 2x0.6 x8 cm obliquely placed on the upper and outer aspect of left side of chest, its upper back end was placed 8.5 cm below the middle of armpit and lower front end 10.5 cm outer to nipple. The wound in its course entered the muscle plane of chest wall, and

was directed downwards backwards and to the right entered the chest cavity through the fifth left intercostal costal space, incised the lower border of left lung (3.0.8 cm) and terminated by making an incised gaping wound 4x1.3x1 cm on the left ventricular wall of heart, 1.5 cm above its apex. The pericardial cavity contained 200 ml of fluid blood mixed with clots. The left lung was collapsed. The left chest cavity contained 300 ml of fluid blood.

4. Abrasion 5x3 cm horizontal on the front aspect of left upper arm, 16 cm below the top of shoulder.

5. Abrasion 2x0.2 cm oblique on the left side of front of abdomen 10 cm outer to umbilicus.

6. Abrasion 0.5x0.5 cm on the front of left knee.

7. Abrasion 6x0.5 cm, 2cm outer to injury No.3 extending to the back of chest.

8. Incised wound 2x0.6 cm , muscle deep obliquely placed on the back of upper aspect of left side of chest. Its upper inner end 6.5 cm below the root oc neck and 1cm outer to midline.

9. Incised wound 2x0.6 cm, muscle deep on the beck of upper aspect of left side of chest. Its upper inner end 4 cm below the lower end of injury No.8 and 5 cm to the left of midline.

10. Incised wound 2.2x0.6 cm muscle

> deep horizontal on the right side of back of chest its inner end 5 cm outer to midline.
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> 11. Incised wound 2.x0.5 cm muscle deep obliquely placed on the back of left side of chest. Its upper inner end was placed 6.5 cm below the lower end of injry No.9 and 3.5 cm outer to midline.
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> 12. Incised wound 2x0.7 cm muscle deep obliquely placed on the back of left of chest. Its upper inner end was placed 2.5 cm below and to left of lower end of injury No.11".

6. So material on record shows that deceased Antony sustained injuries at or about 8.45 p.m. on 28.8.1999 and he died of those injuries. Evidence also shows that it was a case of homicide.

7. Next question arising for consideration is whether it was appellant who inflicted injuries on the person of deceased. Prosecution had examined P.Ws.1 to 6. P.W.1, brother of deceased, gave first information statement. He was not an eye witness. P.W.2 is a relative of deceased. He deposed that at about 8.45 p.m. on 28.8.1999 he was sitting in his house. Then he heard a loud cry of a lady and she was crying for help. He further deposed that he heard cry from a place near Vijayan

Canal. He rushed to spot and saw that appellant and deceased engaged in a scuffle. He further deposed that appellant caught hold of deceased, took a knife and stabbed him. On sustaining stab injury, deceased Antony fell on the canal and from the canal he climbed to the bund. He also deposed that he saw the incident in the light emanating from various houses situated near the place of occurrence. He further deposed that Antony was taken to Gautham hospital and Doctor on duty examined and proclaimed him dead. He identified appellant and M.O.1 knife used for commission of offence. During cross-examination he admitted that he is a distant relative of deceased. Even though he was cross-examined at length, there was no challenge regarding his version that there was light and he had seen the appellant stabbing the deceased. P.W.3 deposed that at about 8.45 p.m. on 28.8.1999 he heard a loud cry of a lady. From his property he looked to the place of occurrence. He saw Antony climbing to the bund from the canal. He deposed that he had not seen appellant. He deposed that he went to the place of occurrence and then he saw deceased lying on the bund in a pool of blood. It is true that he did not gave

evidence regarding identity of the assailant. But his evidence corroborates the evidence of P.W.2. He deposed that on sustaining stab injury Antony fell down. P.W.4 deposed that at about 8.30 p.m. he heard a loud cry for help. A lady was crying for help from the side of Vijayan Canal. So he rushed to that place. He saw appellant catching hold of Antony and stabbing him. He deposed that he saw appellant inflicting 2 or 3 stabs on Antony and then injured fell into the canal and from there he climbed to the bund and at that time appellant again inflicted stab injuries and ran away from the place with knife. He deposed that he saw the incident in the light emanating from houses near the place of occurrence. He further deposed that Antony was taken to Gautham hospital. Though he was cross-examined, nothing was brought out to discredit his testimony. Of course, P.W.4 had admitted that on an earlier occasion while he was engaged in illicit intercourse with a lady, appellant caught hold of him red handed. But that alone is not a ground to discard his evidence. His evidence corroborates the evidence of P.W.2.

8. According to prosecution, P.Ws. 2 to 4 rushed to the place of occurrence on hearing the loud cry of the wife of the

appellant. She was calling for help. So her presence at the place of occurrence was admitted. She was examined as P.W.5. She deposed that she had not seen the incident in which Antony sustained injuries. She was cross-examined by the Public Prosecutor. It is very pertinent to note that she did not give any other version regarding the incident. P.W.6 is the mother of the appellant. According to prosecution immediately after the incident appellant came to the house of P.W.7 wherein P.W.6 was watching a programme in Television and confessed her about the attack and left the place. She also did not support prosecution. P.W.7 is a constable residing near the house of P.W.6. According to prosecution appellant swam through the canal and came to he house of P.W.6. At that time she was sitting in the house of P.W.7 watching T.V. programme. Appellant made a sound and on hearing the sound made by appellant, she came out from the house of P.W.7 and met appellant. P.W.7 deposed that appellant came to his house during the night of 28.8.1999 and appellant was wearing wet clothes. So evidence of P.Ws. 2 and 4 proves beyond any reasonable doubt that it was the appellant who inflicted the injuries on the deceased.

9. The prosecution case was that appellant was in the habit of stealing fish from the Padasekharam in question and he was caught hold by the deceased and because of that enmity he inflicted stab injuries. Right to conduct acqua culture will be auctioned and P.W.9 was the contractor who was the successful bidder for the period 1998-2000. He deposed that he had appointed deceased Antony as a Watchman. He also deposed that appellant was in the habit of stealing fish from Padasekharam and once he was caught red handed by deceased. In fact P.Ws.1 and 4 also deposed that appellant had committed theft of fish from Padasekharam in question. So, the material on record shows that appellant had the motive to commit murder of deceased.

10. Learned counsel appearing for appellant has argued that even if the entire prosecution case is accepted as such, it only proves an offence punishable under Section 304 Part II IPC. It is argued that deceased came to the place of occurrence and attempted to have illicit sexual intercourse with P.W.5 which was objected to by appellant and a scuffle took place. There is absolutely nothing on record to show that such an incident took

place. P.W.5 had no case that the deceased made any attempt to have sexual intercourse either with her or with any other lady. So it cannot be said that appellant had no pre-meditation to commit the murder of deceased.

11. Learned counsel for appellant argued that there is delay in forwarding first information report. Incident took place on Saturday night. First information report reached court on Monday. Of course, as per law, first information report has to be forwarded to Magistrate and not to court. But in this case in inquest report as well as in the postmortem report crime number was mentioned. Inquest was prepared on early morning of 29.8.1999 and thereafter postmortem on the dead body of deceased was also conducted. Even if there is some delay in forwarding first information report that will not affect the prosecution case.

12. It is argued that a reading of Column No.12 of inquest report will show that even at the time of inquest, identity of assailant was not revealed and it was the reason to state in Column No.12(a) that there was suspicion about appellant. In the very same report it was stated that the appellant inflicted

injuries on the person of deceased. Much reliance is placed on Exhibits D1 to D7. As rightly observed by court below, those contradictions are minor which will not affect the substractum of prosecution case.

13. Evidence discussed above clearly shows that finding of the learned Sessions Judge that it was appellant who committed murder of Antony is correct and does not call for any interference. The sentence imposed is also legal land proper. Hence there is no merit in this appeal and the same is only to be dismissed.

In the result, appeal is dismissed.

J.B. KOSHY, JUDGE

K. PADMANABHAN NAIR, JUDGE.

vsv

J.B. KOSHY
AND
K. PADMANABHAN NAIR, JJ.

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CRL. APPEAL NO. 1976 OF 2003.

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J U D G M E N T

5TH DECEMBER, 2006